SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1859.

No. 181.

THE WASHINGTON, ALEXANDRIA, AND GEORGETOWN STEAM-PACKET COMPANY,

ats.

SICKLES & COOK.

This case involves the same questions, and none other, as are presented in No. 180.

I. It is wholly immaterial whether the record of the former trial between these parties operates as a *technical* estoppel, or as a bar. The only questions here are, was it admissible? Was it *conclusive?*

Its admissibility and effect were questions for the Court, with which the jury had nothing to do. They are the questions to be decided now. Miller *vs.* Manice, 6 Hill, 121.

The Court below, inspecting that record, determined that it embraced every matter now in controversy between these parties, except the value of the savings produced by the machine, the continuance of the patent, the use of the machine on that boat, and the continued interest of the plaintiffs in the contract.

If they had needed parol proof to identify the subject matter of the two suits, it would have been admissible, and *that would have been a question for the jury.*—See Young *vs.* Black, 7 Cr., 567; and see the cases below.

The original papers, minutes, and docket entries were equally admissible as the record itself would have been.—King *vs.* Kenny, 4 Ohio, 83; Morgan *vs.* Bennett, 18 Ohio, 545–6.

II. The rule in England is said to be that, in all cases, the former verdict and judgment must be *pleaded*, in order to make them conclusive. And the cases of Vooght *vs.* Winch, 2 B. & Ald., 662, Doe *vs.* Hadduck, 2 C. M. & R., 316, are

relied on as authority for that rule. It is respectfully submitted they do not establish it. The last case depends upon the former. In each, it was assumed that, if the party had pleaded them, they would have been an estoppel; but having failed to plead them, he could not give the record in evidence as conclusive, for he had thereby waived his right to it as an estoppel, and left the matter at large to the jury. And numerous decisions in the State Courts have settled the same rule in this country. But the cases of Trevivan *vs.* Laurence, and Hardy *vs.* Magrath, referred to by this Court in the Railroad case in 13 How., 335, to which may be added the ruling of L. Ch. J. De Grey, in the Dutchess of Kingston's case, Aslin *vs.* Parkin, 2 Burr, 665; Doe *vs.* Wright, 10 Ad. & E., 763; Rex *vs.* St. Pancras, Peak, N. P. C., 219; Shutt *vs.* Bovington, 5 Esp., 57; Kitchen *vs.* Campbell, 2 W. Black, 830, and Young *vs.* Raincock, 7 C. B., 300, show that this rule is to be limited to those cases, in which it could have been pleaded; that the principle settled by this Court in 13 How. applies equally to verdicts and judgments with cases of admissions of record. So that it is immaterial whether that case is of the latter character or not.

And this ruling is supported by—

35 Maine, 202; 19 Vermont, 144; Adams *vs.* Barnes, 17 Mass., 370; 19 Pick, 457; Shelton *vs.* Alcox, 11 Conn., 240; 10 Wend., 83–4; 2 Hill, 480; 17 S. & R., 319; (and see Op. of Huston,) 4 G. & J., 345, already cited.

III. It has sometimes been thought that actions of trespass, and on the case, are exceptions to this rule. But an examination of those cases will show this to be an error, and that in those cases no question of title was involved. Such was the case of Richardson *vs.* the city of Boston, in this Court, 19 Howard; and also the case in Pick, on which that case was decided. But where the title is put in issue, as in Outram *vs.* Morewood, by pleading, or in Rice *vs.* King, 7 John., 21, and White *vs.* Reynolds, 3 Penn., 97, where they were given in evidence, the rule applies. In the former of these a judgment for the defendant, in trespass for taking a horse, was held to be admissible in evidence, and was a bar to a suit for the money received from a subsequent sale of the horse. And in the latter a verdict and judgment for the defendant, in case, for the non-delivery of lumber, was held to estopp the plaintiff from denying the delivery in a subsequent suit on a bond for the price. A distinction which does not appear to have been sufficiently observed by the chancellor in Miller *vs.* Manice, 6 Hill, 121. And see particularly King *vs.* Chase, 15 N. H., 9; Doty *vs.* Brown, 4 Comstock, 71.

IV. It is a question of evidence for the Court, arising on the trial of the general issue in an action of assumpsit. It does not in any degree depend on the technical niceties of a plea of an estoppel, but on a great question of public policy, and that of the right of a party to be discharged from twice trying the same right, in the same Court, with the same adversary. And the only remaining question to be considered by the Court here, is, whether it appears with sufficient distinctness and precision to enable them to say judicially, that the same questions are involved in the two causes.

W. J. STONE, Jr.,
JOS. H. BRADLEY,
For Defendant in Error.